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**PACIFIC X TELESIS**  
Group-Washington

November 30, 1995

Mr. William F. Caton  
Acting Chief  
Federal Communications Commission  
Mail Stop 1170  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Re: *Transmittal Nos. 741,786 Amended. Amendment to The Bell Atlantic Telephone Companies. Tariff FCC No.10; CC Docket No. 95-145*

On behalf of Pacific Bell, please find enclosed an original and six copies of its "Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Amendment to The Bell Atlantic Telephone  
Companies  
Tariff FCC No. 10

Video Dialtone Service

Transmittal Nos. 741, 786  
Amended

CC Docket No. 95-145

DOCKET FILE COPY ORIGINAL

**PACIFIC BELL'S COMMENTS ON DIRECT CASE**

**I. INTRODUCTION**

Pacific Bell hereby submits comments in support of Bell Atlantic's Direct Case.

We agree with Bell Atlantic that in examining a LEC's proposed VDT tariffs, in appropriate cases the Commission should withhold from public inspection proprietary vendor pricing information. We also agree with Bell Atlantic that in reviewing a proposed VDT tariff, the Commission need only determine whether the LEC's chosen scheme is reasonable, and not whether other alternatives would be preferable.

**II. IN APPROPRIATE CASES, THE COMMISSION SHOULD WITHHOLD FROM PUBLIC INSPECTION PROPRIETARY VENDOR PRICING INFORMATION**

In appropriate and narrowly drawn situations, we believe the Commission should withhold from public inspection proprietary vendor pricing information relevant to a VDT tariff. For example, in submitting its cost study material in this proceeding, Bell Atlantic

redacted certain pricing information it or its vendors considered proprietary.<sup>1</sup> After the Commission directed Bell Atlantic to furnish the redacted information, Bell Atlantic did so, but requested that the Commission waive the requirements of 47 C.F. R. §§ 0.453(j) and 0.455(b)(11) and withhold from public inspection, pursuant to 47 C.F.R. §§ 0.457(d), 0.459 and 0.461, the redacted vendor pricing information.<sup>2</sup> Bell Atlantic proposed that the redacted information be made available only for purposes of this proceeding, and only to parties who agree to comply with a proposed Nondisclosure Agreement.<sup>3</sup>

We support Bell Atlantic's request. Forcing a LEC to release information which reflects vendor pricing of individual components used in a VDT system creates a direct risk of competitive harm, for the reasons Bell Atlantic describes.<sup>4</sup>

First, the commenters in this proceeding have consisted almost exclusively of LECs' direct competitors -- the cable incumbents. While it would be harmful to require disclosure of competitively sensitive vendor information to any competitor, requiring release by a LEC with no market share to cable competitors which dominate the market presents an even greater risk of competitive injury.

Second, vendors may be unwilling to negotiate prices until the regulatory proceedings close and risk of public disclosure of those prices passes. Indeed, the prices vendors are willing to offer may be less favorable if they are disclosed for all to see.

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<sup>1</sup> Bell Atlantic Direct Case, Introduction and Summary ("Bell Atl. Intro."), filed October 26, 1995, at 6.

<sup>2</sup> Id. at 8.

<sup>3</sup> Id. at 11-12.

<sup>4</sup> Id. at 9-11.

Ultimately, higher vendor prices will require higher VDT transport prices, harming VDT's competitive viability.

Finally, there is precedent for allowing a company to withhold or restrict access to proprietary information in order to protect its legitimate commercial interests.<sup>5</sup> In order to protect LECs from such harm, we urge the Commission to allow us to file vendor pricing information under seal and restrict access to the information to those who sign a nondisclosure agreement and agree only to use the information in the proceeding at hand. Only in this way can the Commission accomplish "the dual purpose of protecting competitively valuable information while still permitting limited disclosure for a specific public purpose."<sup>6</sup>

### **III. THE INQUIRY IN A VDT TARIFF PROCEEDING SHOULD FOCUS ON WHETHER A LEC'S TARIFF IS REASONABLE, NOT WHETHER ALTERNATIVE SCHEMES MIGHT BE PREFERABLE**

In reviewing Bell Atlantic's tariff, the Commission requested additional information about alternative cost allocation methodologies and business models. Bell Atlantic responded that it should not be required to prove its cost allocation methodology and business model are the best available, but only that they are reasonable and lawful.<sup>7</sup> We agree with Bell Atlantic's position, and believe that it is consistent with earlier Commission pronouncements in the VDT docket proceedings.

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<sup>5</sup> See Freedom of Information Act, 5 U.S.C. § 522; Petition Of Public Utilities Commission, State Of Hawaii, For Authority To Extend Its Rate Regulation Of Commercial Mobile Radio Services In The State Of Hawaii ("Hawaii PUC Petition"), 10 FCC Rcd 2369, at ¶¶ 27, 44-45 (Com. Car. Bur. 1995); Commission Requirements For Cost Support Material To Be Filed With Open Network Architecture Tariffs, 7 FCC Rcd 1526, at ¶¶ 27-29 (Com. Car. Bur. 1992), cited in Bell Atl. Intro. at 11 nn.23-26.

<sup>6</sup> Hawaii PUC Petition, 10 FCC Rcd 2359, at ¶ 27, cited in Bell Atl. Intro. at 11 n.26.

<sup>7</sup> Bell Atl. Intro. at 2-4, citing 47 U.S.C. § 204(a)(1).

The Commission has stated that it will give LECs latitude in selecting the appropriate cost allocation methodology for their individual VDT offerings: “Neither the Commission, nor the Bureau has mandated specific cost accounting and allocation rules for VDT. The Commission is simply requiring LECs to indicate how they are accounting for VDT, to identify dedicated and shared VDT costs, and to disclose the impact of VDT on the jurisdictional separations process and local telephone rates.”<sup>8</sup>

The Commission has also acknowledged the benefits of allowing LECs to develop their own business models for VDT: “LECs have proposed a number of different network architectures for video dialtone, and there are wide variations in the manner in which, and the degree to which, LECs are proposing to integrate their video dialtone systems with their telephone networks. This diversity and experimentation, which we view as beneficial to the development of a modern telecommunications infrastructure, precludes us from adopting a one-size-fits-all rule for the identification of video dialtone direct costs.”<sup>9</sup>

Given these pronouncements, it makes no sense to require a LEC to explain why alternative methodologies and business models are preferable to the ones the LEC proposes. Thus, for example, Commission information requests which ask a LEC to explain why its method of allocating costs “results in a more reasonable allocation of costs than do . . . other

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<sup>8</sup> In the Matter of Reporting Requirements on Video Dialtone Costs and Jurisdictional Separations for Local Exchange Carriers Offering Video Dialtone Services, DA 95-2026, AAD No. 95-59, Memorandum Opinion and Order (rel. Sept. 29, 1995), ¶ 16 (emphasis added).

<sup>9</sup> In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, CC Docket No. 87-266, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd 244 (1994), ¶ 214 (emphasis added).

allocation methods,”<sup>10</sup> or ask whether a LEC should be required to offer different services for use by part-time or one-time users,<sup>11</sup> go beyond appropriate inquiry into the reasonableness of the LEC’s chosen scheme.

Indeed, the Commission appears to be increasing the burden on LECs to prove their VDT offerings use the best cost methodologies and business models available, at the same time as the Commission is decreasing its regulation of cable companies which do business in areas in which a LEC plans to offer VDT. On November 6, 1995, the Commission announced that it had adopted an order proposing to waive cable rate regulation in Dover Township, New Jersey -- where Bell Atlantic seeks to deploy VDT -- because VDT constitutes a “potentially competitive alternative” to cable.<sup>12</sup> The Commission suggested that such a waiver might “serve the public interest by reducing the regulatory burdens faced by the cable operators and encouraging operator innovation and programming diversity, while still satisfying the 1991 Cable Act’s requirement of ensuring that [cable] rates are not unreasonable.”<sup>13</sup>

It is unfair to relax regulation for cable providers due to the prospect of competition, while increasing regulation of the LECs which will provide that competition. Instead of creating such disparity, we urge the Commission to allow LECs the flexibility to choose cost methodologies and business models that suit their needs. If the chosen scheme is

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<sup>10</sup> Order Designating Issues for Investigation, Trans. Nos. 741, 786, CC Docket No. 95-145 (rel. Sept. 8, 1995) (“Dover Investigation Order”), cited in Bell Atl. Intro. at 2.

<sup>11</sup> Dover Investigation Order, ¶ 57, cited in Bell Atl. Intro. at 3.

<sup>12</sup> News, “Commission Proposes Waiver of Rate Regulation Rules for Cable Television Operators in Dover Township, NJ,” Report No. CS 95-23 (rel. Nov. 6, 1995) (emphasis added).

<sup>13</sup> Id. (emphasis added).

lawful and reasonable, it should not matter what alternative schemes might be envisioned.

Such an approach will increase the diversity of VDT offerings and foster the LECs' creativity in designing VDT models that best fit their business goals.

#### IV. CONCLUSION

We recommend an approach by the Commission that recognizes the benefits of allowing LECs to devise their own VDT offerings and cost methodologies. Requiring LECs to justify their choices by explaining why they did not make different ones goes beyond the appropriate inquiry into the reasonableness of the chosen allocation plan. It also presents a significant risk of squelching creativity and limiting the diversity of VDT offerings. Such a result will not benefit VDT or its customers.

Respectfully submitted,

PACIFIC BELL



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Date: November 30, 1995

CERTIFICATE OF SERVICE

I, Chuck Nordstrom, hereby certify that a copy of the foregoing "PACIFIC BELL'S COMMENTS ON DIRECT CASE" filed by Bell Atlantic, was served by hand or by United States first-class mail, postage prepaid, on this 30th day of November, 1995 to the parties listed below.

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\* BY HAND